

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6607

Investigation into tariff filing of Verizon                    )  
New England, Inc., d/b/a Verizon Vermont,                )  
re: revisions to its Pole Attachment Tariff                )

Order entered: 7/16/2002

**I. SUMMARY**

The Public Service Board ("Board") opened this docket to investigate the pole rental rates of Verizon New England Inc., d/b/a Verizon Vermont ("Verizon VT"), on December 31, 2001. Those rates, which the Board permitted to become effective on January 1, 2002, subject to the Board's investigation, represented Verizon Vt's first pole rental rate filing under the Board's revised Rule 3.700, *et seq.*, which became effective on September 1, 2001. Under Rule 3.711, new pole rental rates were to become effective as of January 1, 2002. Based on the evidence presented in this docket and on the stipulation of the parties, I conclude that the pole rental rates proposed by the parties are just and reasonable. In support of that conclusion, I adopt the pole attachment rates and the substance of the findings contained in a stipulation dated May 29, 2002, among Verizon VT, the New England Cable and Telecommunications Association, Inc. ("NECTA"), and the Vermont Department of Public Service ("Department" or "DPS"). Therefore, I recommend that the Board close this rate investigation.

**II. PROCEDURAL HISTORY**

On December 31, 2001, the Board opened an investigation into Verizon VT's pole rental rates pursuant to 30 V.S.A. §§ 225 and 227, and appointed me as Hearing Officer. I convened a prehearing conference in this matter on January 17, 2002. Verizon VT, NECTA, and the Vermont Department of Public Service were represented by counsel. The Adelphia entities<sup>1</sup> appeared through counsel but chose not to move to intervene. Subsequent to the

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1. Adelphia Communications Corporation and its Vermont operating subsidiaries.

prehearing conference, I acknowledged that a letter regarding Verizon VT's pole rental rates had been filed by Duncan Cable and I recognized Duncan Cable as an intervenor in this proceeding without objection from any other party.

On February 21, 2002, pursuant to an agreed-upon procedural schedule, Verizon VT submitted prefiled direct testimony by Edward S. Barber, Jr., a Senior Staff Consultant within the Verizon VT Service Costs organization, and by Seth Hamilton, the Outside Plant Planning/Engineering Manager for Verizon VT in support of its filed and effective pole rental rate. Following the submission of Verizon VT's prefiled testimony, NECTA and the Department issued discovery requests to Verizon VT and Verizon VT responded to those requests. On March 22, 2002, the Department filed the testimony of Charles F. Larkin, Telecommunications Engineer for the Department. On March 25, 2002, NECTA filed the testimony of Paul Glist, a partner with the law firm of Cole, Raywid & Braverman in Washington, DC. Verizon VT propounded data requests to the Department and NECTA and these requests were answered. On April 26, 2002, Verizon VT filed the Rebuttal Testimony of Edward S. Barber, Jr.

### **III. STIPULATION**

Verizon VT, NECTA, and the Department submitted a Stipulation, dated May 29, 2002, ("the Stipulation") and moved for its adoption by the Board. In the Stipulation, Verizon VT, NECTA, and the Department agreed upon specified pole attachment rates for poles solely or jointly owned or jointly used by Verizon VT, and that those attachment rates are just and reasonable. A proposed Board order was attached to the Stipulation. The parties further agreed that Verizon VT would implement the stipulated rates for its next bills after entry of a final Board order adopting the Stipulation, and in those bills to credit the difference that any attaching entity paid between the pole rental rates in effect since January 1, 2002, and the Stipulated Rates, retroactive to January 1, 2002. Finally, the parties acknowledge that the Department's entry into this Stipulation is without prejudice to its position in Docket 6553 challenging the provisions of Verizon VT's Tariff No. 26 requiring attaching entities to make payments to Verizon VT as a non-owning joint user under joint use agreements. In the event that the Board rules adversely to Verizon VT on that issue in that docket, Verizon VT will, subject to its legal rights to seek

reconsideration or modification of, appeal, or otherwise challenge the Board's order, modify its tariff in accordance with the Board's final order.

#### **IV. FINDINGS**

Based upon the evidence of record, I submit the following findings to the Board in accordance with 30 V.S.A. § 8.

1. By Order dated December 31, 2001, in this Docket, the Board allowed to become effective on January 1, 2002, the pole attachment rates that Verizon VT had proposed in a tariff amendment filed on November 16, 2001. The rates for attachments used for cable TV purposes only were \$7.64 for a Verizon VT solely-owned pole, \$3.82 for a jointly-owned or jointly-used pole, and \$3.44 for poles located within the City of Burlington Electric Department service area and in which Verizon VT has a 45% ownership interest. In accordance with PSB Rule 3.706(C) & (D), in the case of attachments used for telecommunications purposes or for both telecommunications and cable purposes, the tariffed rates were double the amounts listed above. Stipulation, ¶¶ 1–3; Verizon VT tariff filing dated November 16, 2001; Barber pf., exh. 1.

2. On March 22, 2002, the Department filed the Rebuttal Testimony of Charles F. Larkin in which the DPS recommended that the annual pole attachment rate for attachments used for cable TV only on a solely-owned pole of Verizon VT be set at \$5.10, and double that amount for other attachments. One half of those amounts would apply to jointly-owned poles, with the exception of those poles in the City of Burlington Electric Department service territory in which Verizon VT has a 45% interest. Larkin pf. at 12.

3. On March 25, 2002, NECTA filed the Rebuttal Testimony of its expert Paul Glist. In his testimony, Mr. Glist recommended maximum rates for attachments used for cable TV purposes only of \$6.51 for a solely-owned pole and \$3.26 for a jointly-owned or jointly-used pole. For those poles located in the City of Burlington Electric Department service territory and owned 45% by Verizon VT, he recommended a maximum rate of \$2.93 for attachments used for cable purposes only. Glist pf., exh. PG-2.

4. The issues in dispute among the parties ("Disputed Issues") were relatively few: (1) whether a 5% adjustment to net pole investment to remove appurtenances not useful to attaching

parties, consistent with the presumption employed by the Federal Communications Commission ("FCC"), was required under the Board's Pole Attachment Rule or appropriate in light of the facts in Vermont, and if so, whether Verizon VT had rebutted that presumption; (2) whether the Board should determine Verizon VT's annual pole attachment rate by using a rate of return factor of 11.25% as proposed by Verizon VT or 9.39%, as proposed by NECTA and the Department; (3) whether the accumulated reserve for depreciation for poles should be based upon the state-specific amount reported by Verizon VT to the Board in its Annual Report or upon a ratio of Vermont to total New England-wide pole plant investment times the New England-wide accumulated reserve for depreciation, as set forth in Verizon VT's ARMIS reports to the FCC; (4) whether the appropriate depreciation rate in calculating the depreciation component of carrying charges was 3.03%, as recommended by the Department; 6.40% as recommended by Verizon VT in its initial filing and by NECTA; or the Board-established 7.1% rate that Verizon VT contended should be used if the Board adopted the 9.39% rate of return that NECTA and the Department recommended. Verizon VT utilized the Board's presumptions regarding usable space in making its pole attachment rate filing and no issues have been raised with regard to usable space in this proceeding. Stipulation, ¶ 8.

5. Verizon VT, NECTA, and the Department entered a Stipulation, dated May 29, 2002, which is referred to above, and asked that the Board approve the Stipulation. In the Stipulation, the Parties jointly recommended that the Board approve the following annual rates ("Stipulated Rates"): for cable TV-only attachments, \$6.87 per solely-owned pole, \$3.44 per jointly-owned or jointly-used pole, and \$3.09 per pole jointly owned with City of Burlington Electric Department. For other attachments, \$13.74 per solely-owned pole, \$6.87 per jointly-owned or jointly-used pole, and \$6.18 per pole jointly owned with City of Burlington Electric Department. Stipulation, ¶ 9.

6. The Stipulated Rates are just and reasonable. As shown above, they represent a compromise among the rate levels proposed by Verizon VT, NECTA, and the Department. By settling this matter, the parties have avoided the uncertainty, delay, and significant costs of further litigation associated with the Disputed Issues.

7. The Stipulation provides that within 30 days after entry of a final Board order approving the Stipulation, Verizon VT shall file with the Board tariff pages replacing the affected pages of its currently effective Pole Attachment Tariff. Stipulation, ¶ 11.

8. The Stipulation also provides that Verizon VT shall implement the Stipulated Rates in its next bills following the Board's final order approving the Stipulated Rates and, in conjunction with such implementation, shall promptly credit, to each affected attaching entity, the difference between any charges paid by such attaching entity for pole attachments from January 1, 2002, to the date of implementation of the Stipulated Rates and the charges each such attaching entity would have paid under the Stipulated Rates for the same services during the same period. Stipulation, ¶ 12.

9. The Stipulation further provides that the Department's entry into this Stipulation is without prejudice to its position in Docket No. 6553 challenging the provisions of Verizon VT's Tariff No. 26 requiring attaching entities to make payments to Verizon VT as a non-owning joint user under joint use agreements. In the event that the Board rules adversely to Verizon VT on that issue in that docket, Verizon VT will, subject to its legal rights to seek reconsideration or modification of, appeal, or otherwise challenge the Board's order, modify its tariff in accordance with the Board's final order. Stipulation, ¶ 13.

#### **V. DISCUSSION AND CONCLUSIONS**

The Board opened this investigation into the pole rental rates charged by Verizon VT pursuant to 30 V.S.A. Sections 225 and 227. The standard for review of rates, under these sections, is whether the rates are just and reasonable. Verizon VT's pole rental rates must also be consistent with the Board's Pole Attachment Rule, including Rule 3.706.

Verizon VT, NECTA, and the Department agree that the pole rental rates embodied in the Stipulation result in a reasonable determination of Verizon VT's annual rental rates and result in annual rental rates that are just and reasonable.

I have reviewed the Stipulation and the evidence provided in support of it. Based on my review of the evidence, I concur with the parties' position that the pole rental rates presented in the Stipulation result in a reasonable determination of Verizon VT's pole rental rates in

accordance with Rule 3.706. There was no disagreement among the parties concerning the issues of space occupied by attachment or total usable space, and they adopted the presumptions contained in Rule 3.706. To the extent that the parties had some differences (enumerated above) in net investment per pole and carrying cost ratio components of Rule 3.706, they have resolved these differences through a compromise. Given that the issues in dispute were identified and explained by the parties in their various testimonial filings and responses to discovery, I find based on my review of those filings that there is a substantial basis for concluding that the compromise rates proposed by the parties are just and reasonable.

From the information contained in the Stipulation record, I conclude that the reduction of pole rental rates effected by the Stipulation takes into account the interests of pole owners, attaching entities, and their customers. I recommend that the Board accept the Stipulation.

The owner-operator of the non-signing party, Duncan Cable, has indicated that he supports the Stipulation.

In concluding that the Stipulated Rates result in just and reasonable rates, I rely in part upon the expertise and judgment of the Department's staff, and their depth of knowledge about Verizon VT's accounting data and pole rental rate justifications. The Department reviewed Verizon VT's accounts applicable to the pole rental rate calculation. I have also relied upon the recommendation of NECTA, whose members use the majority of non-pole owner attachments in Vermont. I have also considered the pole rental rate support filed by Verizon VT and the prefiled testimony and discovery responses of all parties.

All parties to this proceeding have waived the opportunity to file exceptions, present briefs, and make oral argument on this Proposal for Decision in accordance with the provisions of 3 V.S.A. § 811, in the event that this Proposal is substantially in the form proposed by the parties. This proposal is consistent with, and adopts the substance of, the parties' proposal.

Dated at Montpelier, Vermont, this 1<sup>st</sup> day of July, 2002.

s/John P. Bentley

John P. Bentley, Esq.  
Hearing Officer

**VI. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are adopted.
2. The Stipulation of the parties is accepted.
3. Verizon VT shall, pending further order of the Board in Docket 6553, charge an annual rental for cable TV only attachments of \$6.87 per solely-owned pole, \$3.44 per jointly-owned or jointly-used pole, and \$3.09 per pole jointly owned with City of Burlington Electric Department. For other attachments, Verizon VT shall charge an annual rental of \$13.74 per solely-owned pole, \$6.87 per jointly-owned pole, and \$6.18 per pole jointly owned with City of Burlington Electric Department.
4. Verizon VT shall implement the above rates in its next bills following this Order, and shall credit to each affected attaching entity the difference between any charges paid by such attaching entity from January 1, 2002, to the date of implementation of the above rates and the charges it would have paid under the above rates for the same services during the same period.
5. Within 30 days of the date of this Order, Verizon VT shall file with the Board tariff sheets replacing the affected pages of its currently effective Pole Attachment Tariff.

Dated at Montpelier, Vermont, this 16<sup>th</sup> day of July, 2002.

<u>s/Michael H. Dworkin</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: July 16, 2002

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*